

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

ART SHY, et al., :
 :
 Plaintiffs, :
 :
 vs. : Case No. 3:92cv333
 :
 NAVISTAR INTERNATIONAL : JUDGE WALTER H. RICE
 CORPORATION, et al., :
 :
 Defendants. :

SUPPLEMENTAL BENEFIT COMMITTEE :
 OF THE NAVISTAR INTERNATIONAL :
 TRANSPORTATION CORP. RETIREE :
 SUPPLEMENTAL BENEFIT PROGRAM, :
 :
 Intervenor-Plaintiff, :
 vs. :
 :
 NAVISTAR, INC., :
 :
 Defendant. :

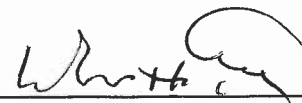
DECISION AND ENTRY SUSTAINING INTERVENOR-PLAINTIFF'S
MOTION FOR LEAVE TO FILE AMENDED COMPLAINT (DOC. #432);
AMENDED COMPLAINT (DOC. #432-1) TO BE FILED INSTANTER;
MOTION TO DISMISS AMENDED COMPLAINT TO BE FILED BY
DEFENDANT NAVISTAR NOT LATER THAN FOURTEEN DAYS FROM
DATE, WITH INTERVENOR-PLAINTIFF HAVING FOURTEEN DAYS
THEREAFTER TO FILE WHATEVER MEMORANDA CONTRA IS
DESIRED; NO REPLY MEMORANDUM IS TO BE FILED WITHOUT
LEAVE OF COURT; FURTHER CONFERENCE CALL SET

The captioned matter came on to be heard on a telephone conference call between Court and counsel, on Thursday, October 3, 2013.

For reasons to be more fully set forth in an opinion to be filed within sixty days' time, the Motion of the Intervenor-Plaintiff seeking leave to file an Amended Complaint (Doc. #432) is sustained. Said Amended Complaint (Doc. #432-1) is to be filed instant. Suffice it to say, at this stage of the proceeding, the Court is not convinced, either as a matter of fact or of law, that said amendment would be futile. Additionally, this Court believes that the best procedure by which to address arguments raised by Defendant in opposition to said Motion to Amend, to wit: the Intervenor-Plaintiff has not exhausted administrative remedies and that Intervenor-Plaintiff's breach of contract claim is futile because it must be resolved through the settlement agreement's dispute resolution process, are best raised, explicated and resolved by the Court through such a motion to dismiss. Said motion to dismiss Plaintiff's Amended Complaint is to be filed within fourteen days from date, with any memorandum contra to be filed within fourteen days thereafter. No reply memoranda is to be filed without leave of Court. The Court assumes that the parties may wish to incorporate by reference arguments previously made during the briefing on the Motion to File an Amended Complaint.

The Court and counsel will speak, once again, by conference call telephone communication, beginning at 9:30 a.m. (Eastern Time), on Tuesday, December 3, 2013. During said conference, the Court will announce its decision on the above-referenced motion to dismiss (assuming said decision has not already been filed in written form), and, should the captioned cause remain with this Court after said ruling, discuss with counsel means to bring this present issue before the Court as quickly as may be practicable.

October 4, 2013



WALTER H. RICE
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of record